

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 441 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DEVPURI HIRAPURI

Versus

STATE OF GUJARAT

Appearance:

MRS MADHUBEN SHARMA for Petitioner

Mr S J Desai, Asstt.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 18/08/98

ORAL JUDGEMENT

This is an application through jail for premature leave. The petitioner has been convicted by order of the Addl. Sessions Judge, Mehsana for offence under section 20(d)(2) of the Narcotic Drugs & Psychotropic Substance Act, 1985 (for short 'the NDPS Act of 1985') and sentenced to 10 years rigorous imprisonment and a fine of Rs. One lakh. The say of the petitioner is that he has

undergone sentence for about 9 years and six months. He is suffering from throat cancer. He says that he is daily taking medicine and undergoing treatment and radio/chemotherapy in throat in the Gujarat Cancer and Research Institute and in M P Shah Cancer Hospital at Asarva since 19.2.98. He has also given a number of his treatment card as B-85325.

2. Learned AGP states that in view of the provisions of Section 32(A) of the NDPS Act, the relief claimed by the petitioner cannot be granted. In support of his contention, he has relied on a Division Bench judgment of this Court reported in 1990 (2) GLR 1365. It is held therein that a convict under the NDPS Act is not entitled to parole or furlough under the Prisons Act and Rules, as Section 32(A) of the NDPS Act prohibits suspension, remission or commutation in any sentence awarded under this Act.

3. Para 1485 of the Jail Manual provides for pre-mature release on medical ground. Para 1485 reads as follows:

"When a prisoner is suffering from illness other than an acute infectious disease of such nature or severity that there is no hope of recovery and it is considered desirable to allow him the comfort of dying out of prison, the procedure detailed under the above rules shall be followed except with the Medical Officer's certificate must be in the form given at Appendix III.

All releases under this Rule count as deaths in the statistical records of the jail"

A reading of the Rules shows that the said provisions is pressed into service on an extra-ordinary situation where it is considered to allow the prisoner to die comfortably out of prison. The detailed procedure provided is required to be followed. The pre-mature release under para 1485 is neither a suspension of sentence nor remission nor commutation. In view of this, the bar provided under 32(A) of the NDPS Act does not come in way of invoking power under para 1485 in a fit case.

3. In view of the above, this Special Criminal Application is allowed and the respondent is directed to consider the petitioner's application under para 1485 in accordance with the provisions. The petitioner's prayer for premature leave may be sanctioned only when the authorities are fully satisfied that the petitioner's

condition is so that he is almost on the verge of death.

Rule made absolute to the aforesaid extent.

....
msp.